IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1145 of 1986
with
CRIMINAL APPEAL No.378 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
BHAYA LAKHDHIR & 2

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Appearance :
MR KC SHAH APP for Appellant
MR RR TRIVEDI for Respondents No.1-2
MR NK MAJMUDAR for Respondent No.3

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 18/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

[**1**] The three accused – (1) Bhaya Lakhdhir, (2) Samant Lakhdhir and (3) Kana Lakhdhir charge-sheeted and committed for the trial before the Court of Sessions, District: Rajkot at Gondal for the charges levelled against them under Sections 307, 323, 324 and 114 of the Indian Penal Code as well as under Section 135 of the Bombay Police Act, vide Sessions Case No.52/1985. The said Sessions Case was made over to the learned Assistant Sessions Judge, District: Rajkot at Gondal. All the three accused were put to trial and after full-fledged trial, learned Assistant Judge, vide judgment and order dated 27th February, 1986 was pleased to acquit all the accused for the offences punishable under

Sections 307, 323, 324 of the Indian Penal Code and under Section 135 of the Bombay Police Act, though all the three accused were found guilty for the offences punishable under Section 325 to r/w. Section 114 of the Indian Penal Code. Accused No.1 – Bhaya Lakhdhir and accused No.3 – Kana Lakhdhir each was sentenced by the trial Court to suffer simple imprisonment for one year and to pay fine of Rs.100/- each in default to suffer simple imprisonment for one month. While accused No.2 – Samant Lakhdhir was directed by the trial Court to be released on surety of Rs.1,000/- for good behaviour for one year under probation.

[**2**] Against the above said judgment and order, accused No.1 – Bhaya Lakhdhir and accused No.3 – Kana Lakhdhir preferred Criminal Appeal No.14/1986 in the Court of learned Sessions Judge, at Rajkot against their conviction and sentence. While State preferred Criminal Appeal No.1145/1986 under Section 378 of the Code of

Criminal Procedure against all the three accused for their acquittal for the offences punishable under Sections 307 to r/w. Section 114 of the Indian Penal Code.

[**3**] Criminal Appeal No.1145/1986 filed by the State against the order of acquittal came to be admitted by the Division Bench of this Court on 7th April, 1987 by following the order.

> "Leave granted. Appeal admitted. Papers of Criminal Appeal No.14/86 filed by the original accused Nos.1 & 3 in the Court of Additional Sessions Judge, Gondal, be called for and the same be placed for hearing along with this appeal."

[**4**] Hence, Criminal Appeal No.14/1986 filed by the accused at Gondal was transferred to this Court and was numbered as Criminal Appeal No.378/1987.

[**5**] Thus, Criminal Appeal No.1145/1986 filed by the State against the order of acquittal against all the accused and Criminal Appeal No.378/1987 filed by the accused Nos.1 and 3 against their conviction are heard together as both the appeals have arisen from the same judgment which is impugned in both the Criminal Appeals as aforesaid.

[**6**] Stating the prosecution case in brief, the incident in question occurred on 28th June, 1985 at 5.30 p.m at Upleta S.T. Bus Stand. According to the prosecution case, before 15 days of the incident, injured Joga Giga and with the persons of the accused party there was some quarrel about Rajibai daughter of one Devsur of village Jamraval and, thereafter, since the parties were inter-related, the quarrel was compromised peacefully.

[**7**] On 28th June, 1985 on the day of incident, Joga Giga had met. Accused Samant Lakhdhir in the

village, but however, Samant Lakhdhir failed to greet Joga Giga and, therefore, Joga Giga had beaten Samant Lakhdhir with fist and kicks. Accused – Samant Lakhdhir conveyed this fact to his brothers i.e. other two accused in this case and, thereafter, all the three accused came to S.T. Bus Stand of Upleta Town where Joga Giga injured, Surabhai Mansur, complainant in the matter and his mother-in-law Mesariben were sitting. Wife of Surabhai named as Somiben and sister of injured Joga Giga was also present. The time was about 5.30 p.m. Near Platform No.1 of S.T. Bus Stand. At that time, all the three accused came and accosted Joga Giga that why he had beaten Samant Lakhdhir earlier. All the three accused, thereafter, inflicted blows by sticks fitted with iron rings indiscriminately upon the head of Joga Giga and Joga Giga received serious injury and had fallen down on the ground. He became unconscious. At that juncture, some police constable came at the scene of offence and took away all the three accused. Joga Giga first was shifted to Civil Hospital at Upleta and he was

treated by P.W.5 – Dr.Himmatlal Bhanji Patel. Injury appeared to be serious, Joga Giga was then shifted to Civil Hospital at Junagadh where he was treated by P.W.4 Dr.Mukesh Revashankar Mehta. Surabhai Mansur, brother-in-law of the injured filed a complaint before the Police Sub-Inspector, Upleta Police Station at about 19.15 hours on the same day and crime came to be registered against the three accused which was investigated at first by P.W.18 – Adesing Jurubha Zala and, thereafter, P.W.19 – Ranmalbhai Nathabhai Dayakar, P.S.I. Upleta. Ultimately, at the result of investigation as stated above, charge-sheet came to be submitted before the learned Judicial Magistrate, First Class at Upleta who committed this case to the Court of Sessions and the said Sessions Case i.e. Sessions Case No.52/1985 was made over to the learned Assistant Sessions Judge, Gondal, District: Rajkot.

[**8**] Learned Assistant Sessions Judge framed charges for the above said offences against all the three accused vide Ex.1 on 17th January, 1986.

The charge was read over to each of the accused to which they pleaded not guilty. The prosecution, thereafter, examined as many as 19 witnesses and produced on record documentary evidence to prove its case. Learned trial Judge, thereafter, drew the attention of each of the accused to the circumstances appearing against them under Section 313 of the Code of Criminal Procedure wherein after denying the impeaching evidence of the prosecution, each of the accused denied the prosecution case in toto. Learned trial Judge, thereafter, heard the State and defence and came to the above conclusion to acquit the accused for the charges under Section 307 to r/w. Section 114 of the Indian Penal Code as well as under Section 135 of the Bombay Police Act. Learned trial Judge came to the conclusion that injuries on the body of injured was proved and, therefore, each of the accused was liable for the offences punishable under Section 325 to r/w. Section 114 of the Indian Penal Code and, therefore, each of the accused was sentenced accordingly, as aforesaid.

[**9**] Learned APP Mr.K.C.Shah for the State in both the Appeals, while learned advocate Mr.U.A.Trivedi for the original accused in both the appeals were heard in detail. So far as Criminal Appeal No.1145/1986 filed by the State against the order of acquittal is concerned, learned APP submitted that the injury caused to the injured was a fracture of right fronto parietal bone of the head were depressed fracture right fronto parietal bone was detected and the injury was serious and was sufficient in ordinary course of nature to cause death. The weapon used was stick with iron ring attached with it and all the three accused attacked injured Joga Giga and hence the case under Section 307 was made out and not under Section 325 of the Indian Penal Code as the intention on the part of the accused for attempt of murdering Joga Giga is distinctly established by the prosecution.

[**10**] As against that learned advocate

Mr.U.A.Trivedi for the original accused in both the appeals submitted that there was single blow, that too by stick may be attached with iron ring and the injury was serious only if the same was not treated timely. Learned advocate Mr.Trivedi draw the attention to this Court referring to the evidence that the accused Kana Lakhdhir had also received injury in the same incident and complaint was filed. Therefore, neither intention nor knowledge can be imputed upon any of the accused as this was the case of free fight between the parties. It is submitted that so far as the Criminal Appeal No.378/1987 for conviction under Section 325 to r/w. Section 114 of the Indian Penal Code of the accused is concerned, a compromise has been arrived at between the parties and accused have tendered an application for permission to place on record compromise and the compromise itself arrived at between the parties. Therefore, it is stated by the learned advocate Mr.Trivedi that Criminal Appeal No.1145/1986 has no merits and Criminal Appeal

No.378/1987 be allowed in view of the compromise arrived at between the parties.

[**11**] We have undertaken threadbare scrutiny of the evidence recorded during the trial and have re-appreciated the evidence. We have taken into consideration the documents produced on record and the contentions raised by the appellant and respondents in both the appeals. We have also assessed vital features of both the appeals and reasonable probability arising out of the circumstances of the case. We have also scanned the reasons assigned by the trial Court for acquitting the accused for the charges under Section 307 r/w. Section 114 of the Indian Penal Code.

[**12**] The summary of the evidence recorded during the trial is as under:

[**12.1**] **P.W.1** – Prabhashankar Purushotam examined

at Ex.7, was an Executive Magistrate and he recorded Dying Declaration of injured Joga Giga. That Dying Declaration is placed on record at Ex.8. **P.W.2** – Jaysukh Diyabhai examined at Ex.9, was panch of panchnama at Ex.10 of scene of offence and according to him, he had scene blood stains at the scene of offence. **P.W. 3** – Arjan Hamirbhai examined at Ex.11, was panch of panchnama Ex.12 by which accused No.1 – Bhaya Lakhdhir presented himself before the police including the muddamal article stick with iron ring. The witness stated that though he had signed panchnama, but he could not say whether the same accused which was present in the Court had presented before the police the said stick of muddamal article which was attached by the police. **P.W.4** – Mukesh Revashankar Mehta examined at Ex.14, was serving as, Medical Officer at Junagadh and injured Joga Giga was transferred to him from Upleta Hospital vide a yadi for a further treatment. He examined Joga Giga at 8.00 p.m at Junagadh on 28th June, 1985. The patient

was admitted in the hospital and was discharged on 7th July, 1985. According to this witness, injured had given history of assault and had a stitch wound T. shape on right frontal of right forehead area of scalp. It was at about 2.0 each length. The witness further stated that injury was on vital part and might have been caused using considerable force. The injury was serious and was capable of causing death, if no immediate treatment was given to the patient. In examination-in-cross, the witness admitted that the patient was able to talk (he was semi-unconscious). The X-ray was taken by Radiologist and it was found that there was depress fracture of right fronto parietal bone. According to him, the injury was possible by fall and dashing with stones. The certificate is produced on record at Ex.15. The X-rays taken are produced on record vide Exs.16, 17 and 18. **P.W.5** – Dr.Himmatlal Bhanji Patel examined at Ex.21, treated deceased Joga Giga first in point of time at Upleta Hospital at 6.30 p.m. The patient was unconscious

and somebody given history of assault. He was bleeding from nose and according to the witness, he had one injury of C.L.W. 1″ X 1/2″ bone deep on frontal scalp. The above injury was fresh grevious and caused by hard and blunt object. The patient was transferred to Civil Hospital, Junagadh immediately. He produced certificate at Ex.22. He also examined accused No.1 – Kana Lakhdhir at 7.05 p.m on the same day and according to him, he also gave history of assault by somebody and the patient was conscious. According to the witness, accused No.1 – Kana Lakhdhir had C.L.W. 1″ x 1/2″ x 1/2″ on left frontal scalp oblique. X-ray did not reveal any fracture. The above injury was fresh, simple and could be caused by hard and blunt object. The witness was cross-examined by the defence. **P.W.6** – Surabhai Mansur examined at Ex.24 is the complainant and stated that Joga Giga happened to be his brother-in-law i.e. brother of his wife – Somi. Mesariben was his mother-in-law, while accused are his cousins. At the time of incident,

he had been to his field and when he returned, he found that accused – Kana Lakhdhir had fallen down on the ground as well as Joga Giga had also was lying on the ground at about 5.30 p.m. at the Bus Stand. He had not witnessed the incident. The complainant – Surabhai, who had given FIR, did not support the prosecution case and, therefore, he was declared hostile. He has not been cross-examined by the defence. His statement was recorded by Police Sub-Inspector, Upleta City Police Station, which is on record at Ex.25, while report under Section 154 is also placed on record. Injured Joga Giga has been examined as **P.W.7** at Ex.26. He deposed that on the day of incident, he was sitting at Platform No.1 of the Bus Stand of Upleta. His mother Mesariben, sister – Somiben and husband of his sister Surabhai Mansur were also with him. Two police constables were also present. Accused No.1 inflicted one blow of stick with iron ring which he avoided and was landed on his left hand. Accused No.2 – Samant Lakhdhir also inflicted one blow by stick

with iron ring on his shoulder. The third blow was given by accused – Bhaya Lakhdhir, which was landed, according to him, on his right side of frontal region of his head, the injury started bleeding and, therefore, he became unconscious. His mother, sister and brother-in-law shifted him to Upleta Hospital and thereafter, to Junagadh Hospital where he took treatment for 13 days. He identified the accused and muddamal stick. In his cross-examination, he stated that in his statement before the police, he had stated that which accused inflicted which blow, but police did not record the same. He also admitted that though he stated before the police that his sister Somi and his mother Mesariben present at the time of incident, but police had not recorded the same. He denied the allegation that complainant – Surabhai was not present at the time of incident. He denied the suggestion of the defence that after inflicting injury to accused Kana Lakhdhir, while he was escaping, he had fallen down and he had got the said injury.

He admitted that in hospital, he had instructed his brother-in-law Surabhai that before the opposite party filed a complaint against them, they must file complaint against accused party. He admitted that what was quarrel about, he did not know. **P.W.8** – Mesariben Giga Meram examined at Ex.27, mother of the injured Joga Giga stated that at the time of the incident Surabhai Mansurbhai, her daughter Somi and husband of her daughter were sitting at Upleta Bus Stand at about 5.30 p.m, at that time, accused came running with stick and they inflicted blow on Joga Giga by stick. Joga Giga was injured on his head and, thereafter, he was shifted to the hospital. She denied that the accused Kana was injured in the incident. She denied the fact that Surabhai was not present at the time of the incident and she was also not present. **P.W.9** -Bhikhubha Dhirubha examined at Ex.28, was unarmed Police Constable, was on duty at the relevant juncture on bus stand of Upleta. According to him, at 5.15 p.m at Platform No.1,

three persons came with sticks and started beating Joga Giga with the sticks having iron rings. Joga Giga was injured on his head and they had apprehended those three persons which he identified to be accused. Other police constable – Dilavarkhan was also with him. None of the accused was injured in the incident. He has been cross-examined by the defence. He stated in clear terms that before the police, he stated that accused – Kana Lakhdhir also received injury on his head and was admitted to the Government hospital for treatment at Upleta. **P.W.10** – Prabhudas Jamnadas examined at Ex.29, was a hawker doing his business at S.T.Bus Stand, Upleta. According to him, some quarrel had taken place in which injured Joga Giga had fallen on the ground and he assisted Joga Giga to stand up. Police Constable Dilavarkhan and other police constables apprehended attacker and they were taken into Police Station. The witness was declared hostile by the prosecution. **P.W.11** – Sattar Valibhai examined at Ex.30, was doing

labour work at S.T.Bus Stand, Upleta and stated that at the time of incident, three persons attacked Joga Giga and on account of this beating Joga Giga started bleeding. He identified three accused to be attacker. He has been cross-examined by the defence and he stated that he could not say whether accused Kana Lakhdhir was also lying on the ground in bleeding condition. **P.W.12** – Bhupatsinh Pravinsinh examined at Ex.31, was also hawker and had a Tea Stole at the Bus Stand of Upleta. In very short deposition, he stated that at about 4.30 p.m., a quarrel took place in which injured Joga Giga had become unconscious and three persons to whom he identified to be the accused were beating Joga Giga with sticks. The witness was cross-examined by the defence. **P.W.13** – Hanubhai Dudabhai examined at Ex.32, was a panch of panchnama at Ex.33 whereby person of the injured was examined. The witness did not support the prosecution case. The said panchnama is placed on record at Ex.33. **P.W.14** – Karsan Tejabhai examined at Ex.34, was a

second panch of panchnama at Ex.33, but he also did not support the prosecution case and hence, turned hostile. **P.W.15** – Kalabhai Rana examined at Ex.35 was a panch of panchnama of arrest of the two accused and he stated that the police had obtained his signature on panchnama, but he did not know whether any sticks were attached from the accused. He has not been declared hostile by the prosecution. **P.W.16** – Narendrasinh Amarsinh examined at Ex.36, was the then Head Constable on hospital duty at Junagadh. According to him, he received a yadi from P.S.O., Junagadh indicating that the Joga Giga was admitted to the hospital. He produced on record a yadi at Ex.20. In pursuance of the yadi, he recorded the statement of injured Joga Giga which he entrusted to the then P.S.O. In his cross-examination, he stated that he recorded the statement of injured after his dying declaration was recorded. In statement, Joga Giga did not state that which accused inflicted which blow, but he named three accused and stated that three accused inflicted injuries

upon him by sticks. **P.W.17** – Mulubha Laljibhai examined at Ex.37 was the then P.S.O. of Upleta Police Station. According to him at about 18.30 hours on 28th June, 1985, he received emergency information from Cottage Hospital and from Medical Officer by phone that Rabari Joga Giga, aged about 20 years was injured in a quarrel and was admitted to hospital. The witness recorded this fact in station diary No.25/85 and P.S.I. was informed by written yadi. He produced on record copy of the station diary at Ex.38. According to him, the investigation was entrusted to P.S.I. Zala of Upleta Police Station. According to the witness, thereafter, P.S.I., Zala recorded the complaint of Surabhai at hospital and presented the said complaint before him and from that he registered the offences vide C.R.Nos.73/85 and 74/85. He has not been cross-examined by the defence. **P.W.18** – Adesingh Jorubhai Zala examined at Ex.40, was the then P.S.I of Upleta Police Station. He was informed by written yadi by P.S.O. of Upleta Police

Station about the quarrel in which Joga Giga was injured. Therefore, according to the witness, he visited Government hospital at Upleta and found that injured Joga Giga was unconscious and hence, he recorded the complaint of Surabhai which he produced at Ex.25. He also recorded the complaint of Kana Lakhdhir at hospital. He had taken both these complaints to Police Station from which the then P.S.O registered crime in both the complaints. He was entrusted with the investigation, drew panchnama, attached blood stain cloths of Kana Lakhdhir and arrested the accused. He attached the muddamal sticks. He recorded the statements of the concerned witnesses. Ex.41 is a panchnama in respect of the body of accused Kana Lakhdhir and attaching of cloths as presented by him. **P.W.19** - Ranmalbhai Nathabhai Dayakar examined at Ex.42, the then P.S.I. of Upleta Police Station was second Investigating Officer of C.R.No.73/85. P.S.I. Zala had entrusted all the papers of his investigation to this witness. According to this

witness, he also recorded the statements of other witnesses and drew the panchnama of the body of the injured Joga Giga by which blood stained cloths were also attached. When investigation was over, he submitted a charge-sheet. The witness cross-examined by the defence. This is all the evidence of the prosecution.

[**13**] From the above evidence, learned trial Judge came to the conclusion that FIR was filed by the informant quickly and injured was taken to hospital immediately and, thereafter, he was transferred to Junagadh on account of serious nature of injury. The accused failed to suggest any enmity between the parties as to why and how the accused would be involved by the prosecution witness in such a case. As per the medical evidence, the injury was found serious. In support of the prosecution case about injury caused to injured, injured as well as other witnesses of the prosecution are creditworthy and

believable and they were corroborated by two Medical Officers. There was no reasons why the injured should not be believed when he is supported by other witness about the quarrel. The learned trial Judge observed that the prosecution though was not able to prove other injuries on the body of the injured Joga Giga, the prosecution proved the fracture of frontal bone on scalp. The medical evidence could not be dislodged by the defence in the cross-examination. According to the learned trial Judge, the prosecution through the evidence was able to prove that all the three accused on 28th June, 1985 at 5.00 p.m. at Upleta Bus Stand caused injury to deceased Joga Giga. Learned trial Judge further observed that looking to the evidence on record and on scanning the provision of Section 307 of the Indian Penal Code, the evidence was not sufficient to prove that the death of Joga Giga was attempted by the accused. It could not be proved, according to the learned trial Judge from the above evidence that there

was intention or knowledge on the part of the accused to cause such injury to injured Joga Giga which might have caused his death and, therefore, the learned trial Judge came to the conclusion that the charge against the accused under Section 307 of the Indian Penal Code could not be sustained, but the charge under Section 325 of the Indian Penal Code for causing grievous heart to Joga Giga had been proved by the prosecution against the accused and, therefore, the learned trial Judge came to the above conclusion to convict and sentence each of the accused as aforesaid.

[**14**] Considering Criminal Appeal No.1145/1986 filed by the State against an order of acquittal of the accused for the charges under Section 307 to r/w. Section 114 of the Indian Penal Code, it must be borne in mind that what are the ingredients of offence under Section 307 of the Indian Penal Code. Having regard to the language,

employed in Section 307 of the Indian Penal Code, it is amply clear that to constitute attempt to commit murder as envisaged by Section 307 of the Indian Penal Code, two elements must be proved. First is *means rea* i.e. guilty intention and second *actus reus* means act of person complaint against. The act must be capable of causing death, if not prevented and that the state of mind of the accused that at the time of incident and before must be of such nature as to label it as either “intention to kill” or “knowledge that by inflicting injury death was inevitable result”. At the same time, it must be also noted that mere nature of injury might not be the sole criteria to test the basic ingredients of Section 307 of the Indian Penal Code. The injury may be dangerous and may be such that may prove fatal if could not be treated immediately, but that itself would not bring the case within the four corners of Section 307 of the Indian Penal Code. It must also be noted that intention precedes the act which is the result. What is important is the

intention or knowledge with reference to act as described by Section 307 of the Indian Penal Code. Thus, it is not essential that to make out the cause under Section 307 of the Indian Penal Code, bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether

the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in Section 307.

[**15**] Now appreciating the evidence on record with reference to the appeal filed by the State, it transpires clearly that no intention or knowledge could be imputed upon the accused with reference to the evidence recorded during the trial. It becomes very clear from the FIR and other evidence on record that the cause of dispute was very petty. It is disclosed that accused Samant Lakhdhir when met injured Joga Giga, he failed to greet Joga Giga and on this account, Samant Lakhdhir was beaten by Joga Giga. This happened half an hour earlier to this incident. It must also be noted that to teach a lesson to Joga Giga, all the three brothers gathered at Bus Stand with sticks attached with iron ring, but the stick with iron ring is still not at deadly weapon to connect the accused with

the intention of killing injured Joga Giga nor knowledge can be imputed to the accused that while inflicting a blow and that too a single blow on the injured, they knew that in all probabilities, death was likely to be caused of Joga Giga. It must be taken note of that in F.I.R. itself, it is noted that the accused accosted Joga Giga with utterance that why Samant Lakhdhir was beaten by him at Vad Chowk and, thereafter, the quarrel was ensued. These circumstances clearly discards the intention or knowledge on the part of the accused. Having stick with iron rings, itself is not at all a weapon for the villagers who ordinarily moves everywhere with such sticks for other purposes. Medical Officer at Upleta i.e. P.W.5 – Dr.Himmatlal stated that the injury was likely to cause death, if no treatment was made available to injured. Likewise in the opinion of P.W.4 – Dr. Mukeshbhai, the injury was serious, but in our view the opinion of this witness was not sufficient to connect the accused with the

intention or knowledge as envisaged by Section 307 of the Indian Penal Code. All the parties were relatives. Above all, though the injury caused on the head of injured Joga Giga is proved, but the prosecution witnesses appears not to have stated complete truth before the Court as it emerges from the prosecution evidence itself that in the same incident, accused Kana Lakhdhir also had received injury in the same incident. P.W.5 – Dr.Himmatlal stated that he had examined Kana Lakhdhir and Kana Lakhdhir had injury on his forehead. Though the injury was simple one. P.W.17 Adesinh examined at Ex.14, P.S.I., Upleta City Police Station, in his deposition in uncertain terms deposed that Kana Lakhdhir, who is accused in this case also, gave a complaint which he recorded and upon which a crime came to be registered. From this, it appears that this is a case wherein otherwise also, intention or knowledge cannot be imputed upon any of the accused.

[**16**] In this respect, in the matter of **Rehmat**

Vs. State of Haryana, reported in **(1996) 10 SCC 346**, in para-9, the Apex Court observed that accused was apprehended on the spot and detained until handed over to the Investigating Officer. It was incumbent upon the prosecution to place before the Court truthful version of the incident and explain how the appellant sustained injuries, found on his body. No explanation whatsoever was coming from the prosecution. Believing the defence case, the Apex Court came to the conclusion that no conviction could be sustained under Sections 307 / 393 of the Indian Penal Code. Though in the present case, injury on the accused is simple, but it is amply established that it is caused in the same incident in the circumstances as narrated above, and hence the true story and the complete truth is not narrated by the witnesses. The intention or the knowledge, therefore, as envisaged by Section 307 of the Indian Penal Code could not be imputed upon the accused. Likewise, in the matter of **Ram Ekbal Upadhya and others Vs. State of Bihar**, reported

in **(2001) 10 SCC 233**, in para-2, the Apex Court has observed as under:-

> *"Having considered the case with two rival versions of the same occurrence and on the fact situation in this case we think that the offence under Section 307 of the Indian Penal Code as found by the courts below can be altered to Section 326 of the Indian Penal Code. The one injury which is described as a grievous hurt is the loss of the index finger of one of the injured. Though we don't have full materials regarding the injuries sustained by the accused it is an admitted fact that they have also sustained injuries in the same occurrence. Considering all these aspects we alter the section of offence to Section 326 of the Indian Penal Code."*

[**17**] Thus, having gone through the evidence entirely and having discussed each aspect of the matter, we are unable to sustain the view of the State that the conclusion of the trial Court acquitting all the accused for the charges levelled against them under Section 307 to r/w. Section 114 of the Indian Penal Code was palpably wrong and manifestly erroneous. Therefore, the Criminal Appeal No.1145/1986 filed by the State against the order of acquittal of the trial Judge must fail.

[**18**] Now considering the Criminal Appeal No.378/1987 filed against the order of conviction and sentence by the two out of three accused under Sections 325 and 114 of the Indian Penal Code, all the three accused of the trial and injured Joga Giga have placed on record a compromise entered into between them as to conviction under Section 325 to read with Section 114 of the Indian Penal Code. Appeal is

continuance of all the proceedings and, therefore, under Section 320 of the Code of Criminal Procedure and application filed by the accused for granting them permission to enter into the compromise and actual compromise took place between the parties could well be considered in this appeal also. It must be noted that third accused i.e. accused Samant Lakhdhir was released on probation by the trial Court, had not preferred any appeal against his conviction under Section 325 to r/w. Section 114 of the Indian Penal Code. However, he is not appellant before this Court, but he is entitled to the advantage of appealing accused.

[**19**] Two appellants of Criminal Appeal No.378/1987 and accused Samant Lakhdhir and injured Joga Giga are present before this Court. An application requesting this Court to grant them permission to enter into a compromise in terms of Section 320 of the Code of Criminal

Procedure was considered. Injured – Joga Giga as well as all the three accused were identified before this Court by learned advocate Mr.U.A.Trivedi. They are present before the Court and on inquiring, it is found that they genuinely desirous to compromise very old dispute between them. Therefore, the application filed by injured and all the three accused of Sections Case No.52/1985 is granted by this Court.

[**20**] Likewise, injured as well as three accused of Sessions Case No.52/1985 have submitted before this Court a compromise executed between them and signed by injured and it bears thumb impression of all the three accused. As aforesaid, all the persons are identified by learned advocate Mr.U.A.Trivedi to this Court. It has been stated with reference to this compromise that the incident which had occurred before 22-23 years has been forgotten between them and since many years, they had very good relationship and

on occasions, they visited houses of each other and, therefore, it was requested that since the offence under Section 325 of the Indian Penal Code is compoundable under Section 320 of the Code of Criminal Procedure, this compromise be recorded and all the three accused of Sessions Case No.52/1985 be acquitted. It is also submitted that though accused Samant Lakhdhir had not filed any appeal against his conviction, but on account of appeal filed by Bhaya Lakhdhir and Kana Lakhdhir is pending before this Court, advantage of those appellants may be made available to non-appealing accused i.e. Samant Lakhdhir. It is submitted that Samant Lakhdhir did not file any appeal because he was released on probation. But when the parties have forgotten the trivial enmity and have cultivated friendly relationship and are relatives, all the three accused be acquitted after recording the compromise as placed on record.

[**21**] In view of the above, we are of the view that when the offence under Section 325 of the Indian Penal Code is compoundable with permission of the Court under Section 320 of the Code of Criminal Procedure and when an advantage of this compromise can be extended to non-appealing accused, for the future harmonious relationship between the parties, it would be in the interest of justice to record the compromise entered into between the parties and accordingly we have recorded the compromise, as presented on record of this appeal. Consequently, Criminal Appeal No.378/1987 stands allowed and the advantage of outcome of this appeal is also extended to non-appealing accused Samant Lakhdhir.

[**22**] In view of the above, the following final order is passed in both the appeals.

Criminal Appeal No.1145/1986 filed by the State against the respondents stands dismissed.

Criminal Appeal No.378/1987 (original Criminal Appeal No.14/1986) filed before the Sessions Judge at Rajkot and was pending before the Additional Sessions Judge at Gondal, is allowed and the judgment and order impugned in this appeal convicting and sentencing; [1] accused Maya Lakhdhir; [2] accused Kana Lakhdhir of Sessions Case No.52/1985 for the offences punishable under Section 325 to r/w. Section 114 of the Indian Penal Code, is set aside on the strength of compromise recorded by this Court and both the appellants are hereby acquitted from the charges proved against each of the accused under Section 325 to r/w. Section 114 of the Indian Penal Code. The advantage of this compromise is also extended to non-appealing accused Samant Lakhdhir of Sessions Case No.52/1985 and the judgment and order convicting and sentencing the accused Samant Lakhdhir impugned in Criminal Appeal No.378/1987 is also set aside and non-appealing accused Samant

Lakhdhir is acquitted from the charges proved against him under Section 325 to r/w. Section 114 of the Indian Penal Code. In Criminal Appeal No.378/1987, bailable bonds submitted by both the appellants stand cancelled. Fine if paid by any of the three accused be refunded to him by trial Court.

Rest of the order of the trial Court in respect of muddamal is not interfered with.

[J. R. VORA,J.]

[SMT. ABHILASHA KUMARI,J.]

(vijay)